**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**C.W.P. No: 541 of 2000**

**Date of decision: 14.8.2007**

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**Vinod Kumar** **Petitioner**

**Versus**

**State of H.P. and others** **Respondents.**

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***Coram***

**The Hon'ble Mr. Justice Deepak Gupta, Judge.**

**The Hon'ble Mr. Justice V.K. Ahuja, Judge.**

***Whether approved for reporting?***[1]

**For the Petitioner: Mr. Bimal Gupta, Advocate**

**For the Respondents: Mr.M.S.Chandel, Advocate General with Mr. R.M.Bisht, Deputy Advocate General.**

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**Per Deepak Gupta, J (Oral)**

This petition has been filed in the public interest. The petitioner is a resident of Chopal and is the duly elected President of the Nagar Panchayat, Chopal. By means of this petition he has prayed that the respondents be directed to open a Government Degree College at Chopal immediately.

Chopal is a small town situated about 100 k.m. from Shimla. There was a demand for opening a

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

college at Chopal and a notification had been issued by the State of Himachal Pradesh on 11.12.1997 directing the opening of a Government Degree College at Chopal. Thereafter an order was issued by the Joint Secretary (Education) on 12.12.1997 whereby additional charge of the Government college, Chopal was given to Mr. D.C. Katoch, Principal of the Government College Seema so that he could make necessary arrangements for making the college functional from the academic session 1997-98. He was also given authority to appoint ministerial staff. Posts were also created for the newly opened Degree College at Chopal.

The Nagar Panchayat, Chopal under the stewardship of the petitioner took a decision to hand over the Nagar Panchayat Bhawan for running the college at Chopal till the college building is constructed. Despite all these developments the college actually never functioned and no admissions were made to the college. The petitioner had filed CWP No. 447 of 1998 in this court praying that a college be opened at Chopal and in the said petition the State had filed reply on the affidavit of Mr. H.C. Rai, Director of Education, Himachal Pradesh. In the reply it was stated as follows:-

"2. That the contents of this para are admitted to the extent that the Govt. opened new Govt. Degree College at Chopal, Theog, District Shimla and Bassa in Mandi District. As regard using of Nagar Panchayat Bhawan for smooth functioning of the College, it will be pertinent to submit that the accommodation in the Panchayat Bhawan would not even be sufficient for Senior Secondary School. The College cannot be started with 4 rooms and one hall. Rest of the contents of this para are wrong, hence denied.

3. That the contents of this para are wrong and denied to the extent that the distance between Chopal and Nerwa is 26 k.m. However, Nerwa is at a distance of about 23 k.m. from Chopal. It is submitted that at present the need of the area is being catered by a Private College Goswami Ganesh Dutt Sanatam Dharam, Nerwa, which is being given ad hoc grants by the Govt. An amount of Rs. 3.50 lacs was released by the Govt. during the financial year 1997-98 to the Nerwa Private College.

12. That as already stated supra College cannot be made functional in four rooms and a hall. Requirement of accommodation for a new College, according to U.G.C. Guidelines under the physical facilities is providing of administrative and teaching infrastructure, Science laboratories and library facilities at the start of the College. Besides this,

Lecture Halls, Auditorium, Hostel facilities and play ground are among the physical facilities.

13. That these are all pre-requisite formalities. The Government is committed to start a College at Chopal. But it can only be made functional when proper infrastructure is available. For the present it is not possible due to financial constraints.

19. That the Govt. stands committed and the college at Chopal will be made functional. But it will be possible only when proper infrastructure will be provided. For the present, it is not possible for want of adequate budget provisions."

In view of the catogrical stand of the State that it was committed to open a degree college at Chopal and the same would be made functional as soon as the proper infrastructure is available, the writ petition was not taken to its logical conclusion. Thereafter the Government opened Degree Colleges at various places in Himachal Pradesh, but no college was opened at Chopal. According to the petitioners necessary building and land was available, but for reasons best known to the government, no steps were taken to provide the budget for the college though budget was provided for other colleges at Theog, Bassa etc.

A Sanatan Dharam Degree College was opened in Nerwa some time in the year 1995-96. Despite the fact that this college was already functioning, the Government had taken the aforesaid decision to open degree college at Chopal and this decision was reitereated in the reply filed in the earlier writ petition. According to the petitioner, now the government has taken over the government college at Nerwa and is not starting the Government College at Chopal. The stand of the State even in the present writ petition is that notification dated 11.12.1997 whereby the college had been sanctioned at Chopal still is in existence, but the college could not be started due to non availability of infrastructure, financial constraints etc. It is also mentioned that it is not possible to start a college at each and every town in the State.

According to the State huge resources and infrastructure are required for setting up a college. It is averred that though the State had taken a decision to open a Government College at Chopal, but the same could not be opened due to lack of suitable site and paucity of infrastructure and, therefore, the State in its wisdom took a decision in the larger public interest to take

over Sanatan Dharam College at Nerwa which is situated close to Chopal and, therefore, at present there is no necessity of opening a college at Chopal. Even now the stand of the State is that Government College, Chopal will be started as and when infrastructure is available as per the guidelines of University Grants Commission. This petition has been pending for long and we have been passing various orders from time to time. On 19.8.2004 this court had directed the Principal Secretary (Education) to personally visit Nerwa and Chopal and assess the spot and file his affidavit. Affidavit was filed by the Principal Secretary (Education) who personally visited the spot and submitted his report. According to him Nerwa was more suitable for setting up of the college because it had better communication and better infrastructure. Even the land availability was better at Nerwa. He had also came to the conclusion that a second college in the sub division was not justified given the number of students studying in the college at Nerwa and the huge expenditure involved in setting up of a college. On 1.6.2007 we had asked for the following information from the respondents:-

> "1. What is the total number of students in the College at Nerwa? On the basis of the

permanent residence mentioned in the college records, it shall be clearly stated how many students belong to Nerwa Tehsil and how many to Chopal Tehsil.

2. What is the staff strength of the college at Nerwa ?
3. What are the subjects being taught in the College?"

An affidavit has been filed by Ms. Anita Rao, Director Higher Education in which she has answered the aforesaid three queries as follows:-

"i) In reply to this point, it is submitted that on the basis of permanent residence, number of students studying in Govt. College, Nerwa from Nerwa Sub-Tehsil and adjoining area 240 and from Tehsil Chopal (adjoining villages and pargana) are 52 as per information received from Principal.

ii) In reply to point No. 2 the staff strength of the Govt. College, Nerwa as per information received from the Principal is as under:-

iii) In reply to point No. 3, it is submitted that the following subjects are being taught in Govt. College Nerwa as per

information received from the Principal, Govt. College Nerwa:-

1. English
2. Physical Education
3. Hindi
4. Sanskrit
5. Political Science
6. History
7. Economics
8. Commerce”

From the facts mentioned above, it is clear that the college at Nerwa is already in existence. The total number of students is only 292, out of which 240 are from Nerwa sub tehsil and 52 from Tehsil Chopal. Such a small number of students does not justify the opening of fresh college. It is not necessary that a college should be opened at each and every small town or village. The quality of education is more important than the number of colleges. It would be pointless to order opening of hundred of colleges without proper infrastructure or staff. It is better to have one college with full staff and proper infrastructure than to have a number of colleges without adequate facilities. The government has the power to recall or review its administrative decisions. Merely,

because once a decision had been taken to open a college at Chopal, it does not mean that the government is bound to open the college at Chopal and nowhere else. Nerwa has been found to be a more suitable place on the basis of various factors and we are, prima facie, in agreement with the decision of the State Government.

No doubt, it is true, that the respondents have taken a decision to open a Degree College at Chopal. We would have normally expected the government to take its decision and statement made to the court to its logical conclusion. However, in the present case we find that a college has been taken over at Nerwa. This college caters to the needs of a large number of students and a majority of the students are from Nerwa. Nerwa is only 26 k.m. from Chopal. From the data available with us there is no justification for setting up another college at Chopal at this stage.

In any event, we are clearly of the view that where a college is to be opened is a policy decision to be taken by the government. The courts would not normally interfere in such decisions taken by the government except where it is found that the decision is totally arbitrary or capricious. In the present case the

government has taken a decision to take over the college at Nerwa on the basis of various germaine factors and it cannot be said that the decision of the government is arbitrary. We cannot, in such cases, issue directions to the government to open a college at Chopal. The writ petition is accordingly rejected. No costs.

However, it is made clear that the government, if it so desires, can open a college at Chopal to implement its earlier decision.

( Deepak Gupta ), J.

August 14, 2007(K) ( V. K. Ahuja ), J.